



**Memorandum**

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation

**DATE:** November 10, 2009

**SUBJECT:** BZA Application #17999 - **Newcomb Day Care Center**

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**APPLICATION**

**Application of Newcomb Day Care Center**, pursuant to 11 DCMR § 3104.1, for a special exception to expand an existing child development center to allow 70 children, and 17 staff, under section 205, in the **R-3 district** at premises 541 Newcomb Street, S.E. (Square 5985, Lot 818). Although not requested, OP believes that relief from parking regulations is also required. An area wide map-amendment pursuant to ZC Order 08-18 effectively re-zoned the property from R-5-A to R-3.

**RECOMMENDATION**

The Office of Planning **does not recommend approval** of the special exception request under Section 205 to permit the Newcomb Day Care Center to expand its operations to allow 70 children and 17 staff persons based on the Office of the State Superintendent of Education's (OSSE) recommendation to the Office of Planning and the Board.

The Office of Planning recommends **approval** for the center's continued operation, as licensed by OSSE for **39 children and approves the request for a staff increase to 14 persons** subject to the following:

- Approval shall be for a period of **three (3) years**.
- The days and hours of operation shall be Monday through Friday, between 7:00 a.m. and 6:00 p.m.
- Enrollment shall be limited to a maximum of 39 children.
- Staff should be limited to a maximum of 14 persons.
- All outdoor activities shall take place under staff supervision.
- Outdoor playtimes during the summer should begin no earlier than 9:00 a.m.

OP also **recommends variance relief** from the on-site parking requirement since parking can be reasonably accommodated on-site due to the existing topography at the rear.



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**SITE DESCRIPTION**

The existing daycare center is located in the Congress Heights neighborhood in the southeast quadrant of the District. The center occupies a converted apartment building in Square 5985. The square is bound by Newcomb Street on the southeast, Oakwood Street on the northwest, 6<sup>th</sup> Street on the northeast and Malcolm X Avenue on the south. A 16-foot wide alley runs along the rear of the property. The property is located in the R-3 district, which is characterized by single family detached and semi-detached residences. The area surrounding the property is primarily developed with small apartment buildings and single-family row and detached homes. The subject property is improved with a two-story, (previously a four-unit apartment) brick building with two-story apartment buildings on either side of the property.

**ZONING HISTORY**

The Newcomb Day Care Center has operated with Board approval at this location since 1992, per BZA Orders # 15775 (Dec. 2, 1992), #16242 (1997) # 17280 (2005).

<b>BZA Approvals (1992 – Present)</b>	<b>Granted</b>	<b>Conditions</b>
<b>1992 – #15775</b>	Increase in the number of children from 13 to 28; Aged 6 weeks to 14 years with staff increase from 2 to 4 on the first floor of the apartment building.	Approval for 5 years; limited to 28 with 4 staff; Open 6 a.m. to 6p.m. Monday through Friday.
<b>1997 – #16242</b>	Increase from 15 to 29 children, aged two to six and 4 staff on the 2 <sup>nd</sup> floor.	Approval for 5 years; 2 on-site parking spaces; Open 6 a.m. to 6 p.m. Monday to Friday.
<b>2005 – #17280</b>	Increase from 29 to 70 children and 14 staff.	Summary Order. Approval for 3 years; Monday through Friday 7 a.m. to 6 p.m.; 70 children; 14 staff persons; one on-site parking space at rear; Proper maintenance of trash and parking area.

The approval for the existing facility has now expired, necessitating this application.

**ANALYSIS**

The use of the property for a child development center for more than 15 children is permitted as a special exception with Board approval subject to the criteria of Section 205. As previously stated, OP's analysis is based on the licensed capacity of the center for 39 children. In conversation with the applicant regarding concerns expressed by OSSE, the applicant agreed to eliminate the request for an increase in the number of children.

**Operation of the Center**

Currently, the daycare operates as follows:

- Monday through Friday, from 7:00 a.m. to 6:00 p.m. According to the applicant, the center registered 39 children, including infants, toddlers, and children up to 6 years old.
- According to OSSE's listing of child development centers, it is licensed for 39 children, between 6 weeks to 6 years old.
- 13 persons are currently employed by the center.
- There is a play area to the front of the building and play times are scheduled according to ages. Children are accompanied to a nearby park and recreation facility located in the immediate neighborhood.
- Drop-off and pick-up are curbside at the front of the building and is supervised by staff.
- According to information provided to OP, the majority of attendees reside within the Congress Heights neighborhood.

The Board of Zoning Adjustment is authorized to grant special exceptions if the request is in harmony with the intent of the Zoning Regulations and Maps and should not adversely affect the use of neighboring property, subject to the criteria specified in Sections 205 as follows:

***205.2 The center shall be capable of meeting all applicable code and licensing requirements.***

The existing daycare is a licensed facility in accordance with Title 29 DCMR Chapter 3 and has been in operation since April 1992. Based on the request for an increase in the number of children, OP contacted the Office of the State Superintendant for Education and was advised that increased enrollment was not recommended for this center. OP's subsequent analysis is therefore based on the center's licensed capacity for 39 children as recommended to OP by OSSE.

***205 The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children or elderly persons.***

The building fronts Newcomb Street and children are dropped-off and picked up curbside under staff supervision. The majority of infants and toddlers, are walked to the daycare or arrive by bus and are dropped-off and picked up at staggered intervals. Few parents drive to the center at drop-off and pick-up times. No evidence of any adverse traffic impacts due to curbside drop-off and pick-up at the center have been presented to OP. A site visit indicated that there is still unrestricted parking on both sides of the street, as stated in earlier OP reviews. No additional vehicular traffic is generated through the neighborhood by attendees. The one additional staff member would not result in any significant change to traffic patterns.

***205.4 The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.***

Section 2101 of the Zoning Regulations requires 1 parking space per 4 teachers and other employees. The center currently has 13 staff persons for a requirement of 3 parking spaces but only 2 staff persons drive. The requested increase to 14 staff would require 4 on-site parking spaces.

Previous BZA orders included a condition for 2 on-site parking spaces. After a recent site visit, it was observed that the existing rear yard could probably accommodate only one conforming vehicular space with extensive excavation of a portion of the rear yard, and the provision of a retaining wall. No residences abutting the alley with frontage on Newcomb Street have rear parking due to the alley's elevation below the rear yards of their properties. Therefore, the applicant requires variance relief from the center's off-street parking requirement for 4 vehicles (analyzed below).

***205 The center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.***

The center has a small play area located at the front of the building. All play activities are currently supervised and are scheduled by age group. There is nothing on record to suggest that the center has had an adverse impact on the neighborhood due to noise, which may affect residents of apartment buildings, located on either side of the subject property. Since the play times are grouped according to children's ages, the impact of noise or activity from the center would have minimal impact on adjacent properties.

***205.6 The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirement as it shall deem necessary to protect adjacent and nearby properties.***

Currently, the front of the property is fenced with a chain link fence. Based on a site visit, the front yard space is no greater than 15 feet wide as measured between the building restriction line and the brick front

of the building. This area is covered with bark mulch and functions as a small on-site play area for the children. OP does not believe that sufficient space is available for shrubbery or other landscaping but would not oppose replacement of the chain link fence with a more aesthetically pleasing one.

***205.7 Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself.***



Staff accompanies children to and from a nearby park located on Malcolm X Avenue, south (or rear) of the subject property. The property is located approximately 250 feet to the signalized intersection of Malcolm X Avenue and Newcomb Street. There are sidewalks to access the park area, which is well maintained and equipped with a tot-lot and play equipment.

The children are also accompanied via a buggy carriage to a District-owned recreation facility at the corner of Martin Luther King and Alabama Avenue during summer and winter months.

***205.8 The Board may approve more than one (1) child/elderly development center in a square or within one thousand feet (1,000 ft.) of another child/elderly development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.***

There is another daycare center, the Love and Care Day Care located in the same square at the rear of the subject site, at 554 Malcolm X Avenue. According to public records, this is a licensed center, which operates between the hours of 7:00 am and 6:00 p.m. with a capacity to accommodate 27 children (12 years and under). The center's order (#16344) stated that the majority of the children who attend this daycare are also residents of the immediate neighborhood and are dropped-off and picked up via public transportation or by walking. The adjacent center has been in operation since 1997 and OP has no evidence to suggest that there has been an adverse cumulative impact on the neighborhood due to both centers. Newcomb Daycare Center could continue its operations within its licensed capacity without an adverse cumulative effect of similar facilities in the neighborhood due to noise, traffic and their operations.

### **Section 3104.1**

The standard by which the BZA should approve a special exception is set forth in Section 3104.1 of the Zoning Regulations. The following demonstrates how the proposed child development center has met these standards:

***... special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.***

OP has no evidence that the current operation at its licensed capacity for 39 children as well as the request for 14 staff would adversely affect the use of neighboring property. The intent of the R-3 zone as mapped in this area would not be jeopardized, as the child development center is a use permitted by special

exception, subject to review approval by the BZA. The continued operation of the center within its licensed capacity as recommended by OSSE would meet the requirements of Section 205 and the intent, purpose, and integrity of the Zoning Regulations and Map would be maintained.

### **VARIANCE RELIEF**

#### **Parking**

Section 2101 of the Zone Regulations requires 1 space per every 4 employees for a child development center. The variance request must show evidence that the property is unique due to exceptional narrowness, shallowness, topographical conditions or extraordinary situation, whereby the uniqueness, in combination with the zoning regulations would result in peculiar and exceptional practical difficulty to the owner and the variance should not substantially impair the intent, purpose and integrity of the zone plan.



The subject property is an irregularly shaped lot with a rear yard boundary that is much narrower than the front of the property. The building's frontage on Newcomb Street is 34 feet wide with a depth of 100 feet along its northern property line and 86 feet along the southern property line. The adjacent property at 549 Newcomb Street encroaches over a triangular portion of the subject property at its southeast corner adjacent to a 16-foot wide alley at the rear. The rear yard is cumbersome due to the combination of its elevation above the alley and its irregular shape.

There is a practical difficulty in providing parking at the rear since the rear yard would accommodate one 9'x19' parking space only by extensive excavation and supporting walls. No other residence which fronts on Newcomb Street provides parking at the rear, as the majority have retaining walls abutting the alley.

Variance relief to waive the center's parking requirement would not impair the intent of the zone plan, since there is sufficient available unrestricted parking in the immediate neighborhood and square. In addition, the majority of employees and attendees reside in the neighborhood or use public transportation.

### **AGENCY COMMENTS**

DDOT has not submitted a report to date.

### **COMMUNITY COMMENTS**

The ANC8C submitted a recommendation to oppose an increase in the children and staff at the center in a letter dated October 29, 2009. Based on the letter, concern was expressed regarding interior and exterior improvements and maintenance of the building.

**SUMMARY AND RECOMMENDATION**

The requested special exception relief would enable continuation of a much needed service for residents, and parents in the community. The location and hours of operation have not had a negative impact on the neighborhood due to additional noise or traffic since its inception. OP has no evidence to suggest that the center's continued operation at its licensed capacity for 39 children would have an adverse impact on the neighborhood. As demonstrated above, the application meets the standards outlined in Section 205 for approval of the special exception. Additionally, if the Board accepts the inclusion of the request for a parking variance as part of the application, granting the variance relief would not tend to adversely affect the intent, and purpose of the zone plan.

Therefore, the Office of Planning recommends conditional **approval** of the continued operation of the center at its currently licensed capacity for 39 children, with **approval** for a requested staff increase from 13 to 14 persons.

OP also **recommends approval of variance relief** from the center's on-site parking requirement.